

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Delores H. Fridge,  
Commissioner, Department of Human Rights,

Complainant,

v.

**SCHEDULING ORDER AND  
ORDER COMPELLING  
DISCOVERY**

The State of Minnesota by its Board of Trustees of  
the Minnesota State Colleges and Universities,  
and its Minneapolis Technical College,

Respondent.

The above-entitled matter is before the undersigned Administrative Law Judge on Complainant's motion to extend the deadline for concluding discovery and both parties' motions to compel discovery. A hearing was held on these motions on February 6, 1998. The motions were deferred pending resolution of a Motion to Dismiss. A hearing was held by telephone conference on May 6, 1998, at 4:00 p.m. The record on these motions closed at the conclusion of the telephone hearing on May 6, 1998.

Peter M. Ackerberg, Assistant Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, Minnesota, 55401-2128, appeared on behalf of the Respondent, Minnesota State Colleges and Universities (hereinafter MnSCU or Respondent). Carl M. Warren, Attorney, Civil Practice Clinic, 190 Law Center 229 - 19th Avenue South, Minneapolis, Minnesota, 55455, appeared on behalf of the Complainant, the Minnesota Department of Human Rights (hereinafter MDHR or Complainant).

Based upon the Memoranda filed by the parties, all the filings in this case, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that:

1. A mediation session has been scheduled for June 22, 1998. If no settlement is reached, the following schedule shall apply:
2. Complainant shall provide the unredacted information sought by Respondent to the Administrative Law Judge by June 30, 1998, for *in camera*

inspection. The information provided should not include any privileged legal representation notation, telephone numbers and addresses, or birthdays.

3. By July 8, 1998, Respondent shall provide answers to Interrogatories 2 (regarding the hierarchy from Lange to the administrator of the MTC Aviation program in 1993-94), 3, 10 (from 1987 to present), 11, and 12 (for courses taught by Lange from 1987 to 1995) and Requests 3, 5, 6 (for courses taught by Lange from 1987 to 1995), 11 (from 1987 to present), and 13 (for courses in which Charging Party was enrolled) by July 8, 1998.

4. All discovery shall be completed by August 31, 1998.

5. September 18, 1998, shall be the last day on which a dispositive motion may be served and filed. Any reply must be made by September 30, 1998. If a hearing is required, it will be scheduled immediately after the close of the reply period.

6. Unless provided earlier in response to discovery, the parties shall exchange witness lists and exhibit lists and arrange for copying of exhibits not later than October 30, 1998.

7. The hearing will be held commencing November 16, 1998, at 9:00 a.m. at the University of Minnesota Law Center.

Dated this \_\_\_\_ day of June, 1998.

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STEVE M. MIHALCHICK

Administrative Law Judge

### **MEMORANDUM**

Complainant seeks to compel answers to discovery relating to all aspects of the issues set forth in the Complaint in this matter. Similarly, Respondent has sought to compel certain information regarding the Charging Party in this matter. Subsequent to the discovery motions being made, an Order was issued dismissing all claims in the Complaint not expressly identified in the Charge of Discrimination filed in this matter. *Order Partially Granting Motion to Dismiss*, at 2 (Order issued April 16, 1998). The

claims that remain for hearing relate to alleged discrimination based on race based upon alleged facts including the following:

- a) [Charging Party] being accused of cheating on an examination by Lange;
- b) information needed on examinations not being made available [to Charging Party],
- c) initial denial [to Charging Party] of an opportunity to take an examination,
- d) [Charging Party] being told a form was required due to absences,
- e) Lange refusing to credit Charging Party for time made up,
- f) Lange showing other students a helicopter when Charging Party and another student were out of class,
- g) tools [to be provided to Charging Party] arriving late and in poor condition, and
- h) [Charging Party] not receiving a grade for a class and being offered no credit for that class.

*Order Partially Granting Motion to Dismiss, at 4.*

Complainant's Interrogatory 2 requests identification of the administrative hierarchy at the Minneapolis Technical College (MTC) from 1987 to the present. There are no issues remaining for hearing that require such broad discovery. Respondent must ensure that its answers to discovery identify the administrator and employees of the Aviation program at MTC in 1993-94 and clearly identify who Lange reported to in that structure.

Interrogatory 3 and Request for Production of Documents 3 (hereinafter "Request") seek a full description of Lange's work at MTC, including extracurricular activities, and copies of all documents related to Lange's courses. The information requested is clearly relevant to the issues identified above and must be provided to Complainant. The information requested dates from 1987 to present. This is a reasonable request for information likely to lead to evidence admissible at a hearing in this matter.

Interrogatories 4 and 5 and Request 7 seek exceptionally detailed evidence regarding MTC's grading policy and how that policy was developed. Respondent provided the faculty handbook, which contains the grading policy, in its answers. Complainant asserts that the degree of detail requested is needed to determine whether the grading criteria were developed in a race-neutral fashion and to help identify witnesses. Complainant has not identified any facial problem with the MTC's grading policy and no such argument is among the issues that remain for hearing. Complainant's request to compel answers to Interrogatories 4 and 5 and Request 7 is denied.

Interrogatory 10 and Request 11 seek the policies maintained by MTC regarding complaints of racial harassment and discrimination. Complainant expressly requests all

those policies that MTC has ever had. The existence of such policies and their exact wording is clearly relevant. Complainant has not shown the relevance of its request for policies in existence prior to 1987. Respondent must provide any information in its possession from 1987 or later regarding MTC's policies regarding complaints of racial discrimination or harassment.

Interrogatory 11 seeks the identity of witnesses Respondent intends to call or of persons with knowledge regarding the allegations in this matter. In addition, the interrogatory seeks summaries of each person's knowledge relevant to this matter and other identifying information. Complainant is entitled to this information and Respondent is under an ongoing duty to provide it.

Interrogatory 12 and Request 6 seek all information regarding all of the courses, including student enrollment and grades, from the Aviation program. Respondent provided such information for classes taken by Charging Party. Complainant maintains the information is needed to assess the disparate treatment and constructive expulsion claims. The constructive expulsion claim has been dismissed. The disparate treatment claim relates only to Lange's courses. Narrowing the information to the courses taught by Lange from 1987 to 1995 renders the request relevant and not unduly burdensome. The narrowing of the discovery excludes any reference to placement information. There is no issue remaining in this matter regarding placement by MTC and no inquiry regarding placement is likely to lead to admissible evidence.

Request 4 seeks all documents relating to classes by taught by another teacher. Request 5 seeks all information for students enrolled in classes with Charging Party. Request 4 is relevant only to the extent that the teacher identified took over classes taught by Lange in which Charging Party was enrolled. To that extent, the answer required under Request 4 is completely contained in Request 5, since Charging Party was enrolled in those particular classes. Since disparate treatment in grading by Lange is an issue remaining for hearing, the comparison of grades issued to Charging Party to grades issued to other students in the same class is clearly relevant. Respondent must comply with Request 5. The Complainant's motion to compel answers to Request 4 is denied.

Request 12 seeks employment policies and employee handbooks for the MTC. Respondent produced its 1993-94 faculty handbook. Complainant asserts that this information should be provided to determine what nondiscriminatory policies existed at MTC and whether they were enforced. This request is fully met by Interrogatory 10 and Request 11. Request 12 is duplicative and unnecessary.

Request 13 seeks all documents that set forth the minimum qualifications for receiving a passing grade in each course in the Aviation program from 1987 to present. Complainant seeks to inquire as to whether other minority students were subjected to discrimination. The Charge in this matter alleged individual discrimination. There is no class of persons being represented in this matter. The discovery request is overbroad. Limited to the courses in which Charging Party was enrolled, the discovery is relevant and not unduly burdensome.

In its Request for Production No. 4 (hereinafter "Request 4") Respondent sought discovery of any diaries, notebooks, or other writings by Charging Party relating to the

events or damages alleged in the Complaint. Complainant provided photocopies of Charging Party's diary, with numerous redactions. Respondent has moved to compel production of the information sought in Request 4, without redactions.

Complainant asserts that its redactions are appropriate because the items removed are not relevant and not likely to lead to evidence admissible at any hearing in this matter. One notation is identified as privileged as relating to legal representation. Complainant's Memorandum Opposing Respondent's Motion, at 1. The others are variously identified as notations regarding family matters, Charging Party's fiancée, errands, personal reflections, appointments, activity reminders, telephone numbers and addresses, and birthdays. Respondent is not seeking disclosure of the privileged legal representation notation, telephone numbers and addresses, or birthdays.

In addition to a lack of relevance, Complainant asserts that producing the unredacted information would be an unwarranted intrusion into Charging Party's privacy. To minimize that intrusion, Complainant suggests that an *in camera* inspection of the disputed notations be performed and a protective order be issued to restrict dissemination of that information which is ordered to be disclosed.

Complainant seeks damages for mental anguish and suffering alleged to have been suffered by Charging Party. Complaint, at 10. In defending against this claim, Respondent is entitled to information that would tend to show that no such damages were suffered by Charging Party. Absent an examination of the disputed information, it is impossible to determine if the information has any bearing on the issues raised in this matter. For that reason, Complainant shall submit the disputed information to the Administrative Law Judge for *in camera* inspection. The information shall not include the privileged legal notation, the telephone numbers and addresses, or birthdays. Depending upon the outcome of the *in camera* inspection, a protective order may be issued.

S.M.M.